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Comments of America Online, Inc.
CC Docket No. 96-262
January 29, 1997

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Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Transport Rate Structure and Pricing	)	CC Docket No. 91-213
	)	
Usage of the Public Switched Network by Information Service and Internet Access Providers	)	CC Docket No. 96-263

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COMMENTS OF AMERICA ONLINE, INC.

America Online, Inc. ("AOL"), by its attorneys and pursuant to Section 1.415 of the Commission's rules, hereby submits its comments in the Notice of Proposed Rulemaking ("Notice") released on December 24, 1996, regarding Access Charge Reform.[1/]

INTRODUCTION AND SUMMARY

Founded in 1985, AOL is the world's largest Internet online information service provider, with approximately 8 million members and local dial-up access in 700 cities

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[1/] In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, Usage of the Public Switched Network by Information Service and Internet Access Providers; Notice of Proposed Rulemaking and Third Report and Order; CC Docket Nos. 96-262, 94-1, 91-213, FCC No. 96-488 (rel. December 24, 1996) ("Notice").

worldwide. Through its service, AOL provides consumers with original programming and informative content, E-mail capabilities, access to the World Wide Web and informational databases, electronic magazines and newspapers, and opportunities to participate in online "chat" conferences, that in totality offer an interactive community that enhances learning, personal communication, and productivity. AOL was born and operates in a highly competitive environment, where it must continuously adapt to the changing needs and expectations of its customers, to provide quality and value in its service.

In the Notice, the FCC has appropriately recognized that the tremendous growth of interactive computer services, including usage of Internet online services such as AOL, has provided significant benefits for all Americans.[2/] The touchstone of the Commission's past policies, and now a bedrock statutory purpose of the Telecommunications Act of 1996 ("1996 Act"),[3/] is to avoid unnecessary regulation, and to foster vibrant competitive markets for innovative services. As such, the Commission should affirm its tentative conclusion that its current access charge rules should not apply to interstate information services providers.

Specifically, the Notice underscores the uneconomic nature of the FCC's present access charge regime in today's competition-driven environment. Rather than send economically efficient pricing signals, the rate structure and rate levels of the current access

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[2/] See Notice at ¶ 282.

[3/] 47 U.S.C. § 230(b)(2) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (February 8, 1996).

charge framework skew marketplace and business decisions. Application of these charges to interstate information services would move regulatory policy in precisely the wrong direction by compounding and perpetuating these inefficiencies. Even worse, saddling information service providers with interexchange carrier access fees has the potential to disrupt the thriving Internet online environment by increasing costs dramatically for users.

Aside from the inefficiencies already recognized by the Commission, interexchange carrier access charges are the wrong mechanism to address emerging infrastructure needs. The circuit-switched telephone network capacity that incumbent local exchange carriers ("LECs") have favored in their investment decisions is inefficient for carriage of the bursty data traffic that characterizes Internet online usage. Rather than forcing the round peg of Internet online data traffic into the square hole of access charges, the FCC has properly identified the need for maximum incentives for LECs to invest in more efficient, data-friendly networks.

Instead of expanding its interexchange access charge rules to new areas, the FCC should continue to move in the direction of cost-causative rates that reflect the underlying economics of the network. By promoting local telecommunications competition, particularly facilities-based competition, and explicit universal service subsidy mechanisms, the FCC's policies can best foster the development of infrastructure necessary to support the bandwidth needs of tomorrow. Accordingly, the Commission should persist in its aggressive pursuit of robust local telecommunications competition and seek to drive prices to forward-looking long-run incremental costs.

Critically, dire predictions of the imminent collapse of the public switched network and broad claims about uncompensated use of the network by information service providers do not paint an accurate picture of the network landscape. Pin-pointed instances of public switched network congestion, which is distinct from congestion on an Internet online information service provider's network, can and should be addressed by efficient and forward-looking traffic balancing and engineering, as well as rational pricing for necessary services and facilities. AOL is dedicated to pursuing strategies that can deliver information services as reliably, efficiently and cost-effectively as possible. To date, however, even the LEC studies referred to in the Notice do not demonstrate that the LECs are not already compensated fully by their present revenues for the costs of increased traffic. Accordingly, the FCC should reject arguments that information service providers should pay interstate interexchange carrier access charges to pay for increased facilities costs.

I. THE FCC SHOULD AFFIRM ITS TENTATIVE CONCLUSION THAT ACCESS CHARGES SHOULD NOT APPLY TO INTERSTATE INFORMATION SERVICES

In the Notice, the Commission tentatively concludes that information service providers should not be required to pay current interstate access charges.[4] In reaching this tentative conclusion, the Commission correctly emphasizes that existing access charges include non-

[4] See Notice at ¶¶ 283, 288.

cost-based rates and utilize inefficient rate structures, and that sound policy would be disserved by extending these uneconomic charges to information services providers.[5] Indeed, the FCC expressly recognizes the negative impact imposition of access charges could have on the information services industry, which has brought numerous benefits to the American public.[6] Based upon its experience in this dynamic market, AOL agrees fully and urges the Commission to affirm clearly this sound conclusion.

A. Requiring Information Service Providers to Pay Access Charges Would Send False and Harmful Economic Signals

The potential impact that application of the FCC's interexchange access charges to information service providers would have on the Internet online information services industry highlights the soundness of the Commission's tentative conclusion. The market for Internet

[5] Id. at ¶ 288.

[6] Id. Indeed, the U.S. economy as a whole benefits. See, e.g., Laura B. Smith, "Frontier Economics," IAC Industry Express, December 11, 1995 ("By the year 2000, the Internet will account for 1.3 percent of the nation's economy . . ." and will generate $45.8 billion in revenues); Marcia Stepanek, "To Build a Better Net?," The Netizen, January 16, 1997 (the Internet has created an "estimated $250 billion . . . in today's economy."); "Internet is 'Eyeing Your Lunch,'" Communications Daily, September 11, 1996, at 3 ("Internet ad volume is expected to double to $110 million this year, with projections of up to $5 billion by 2000."). In addition, almost all sectors of daily living can be enhanced, including business, personal communications, and medicine. See, e.g., "The Electric Tutor Is In," Business Week, January 20, 1997, at 16; Chairman Reed E. Hundt, Speech before the Wall Street Journal Business and Technology Conference, September 18, 1996 (the Internet will "change the way we watch TV, alter the significance of radio, revolutionize education, expedite and improve health care, [and] bring down radically the prices of international telephony"); see also Vinton G. Cerf, Senior Vice President, Data Services Division, MCI Telecommunications Corp., "Computer Networking: Global Infrastructure for the 21st Century," Computer Communications Networks (1997).

online services is highly competitive[7] and providers must respond rapidly to provide consumers with the high quality and price-conscious services they desire. For instance, in response to consumer desires, AOL continuously updates its services and offerings, and creates exclusive interactive programming that often relates to important current events. For example, AOL created an entire area to provide information and human interest stories on the Presidential Inauguration that included a live feed from the inauguration itself. AOL also created the "Olympic Journal," in connection with 1996 Summer Olympics, and has areas like "Highlights Online," an online version of the popular children's magazine. Likewise, in recognition of the market demand for alternative pricing options, AOL recently added a flat-rate $19.95 billing plan. Simply put, in the dynamic Internet online service environment, service providers must swiftly provide consumers with high-value, ever-changing services at competitive prices.

In light of this intensely competitive environment, if the FCC (as well as State commissions who would likely follow suit)[8] were to impose the interexchange access charges upon information service providers, it is almost inevitable that these charges would

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[7] The total number of ISPs nationwide has increased from 1000 in January, 1996 to almost 4,500 in January, 1997. Mike Ricciuti, "Market a Tight Squeeze for New ISPs," The Net. News.Com, July 10, 1996 (citing The List (a web site that tracks ISPs and can be accessed at <www.thelist.iworld.com>)); The List (as reported on January 23, 1997).

[8] Significantly, the FCC's interstate access charge regime has been used as a model in most state jurisdictions. See "FCC Access Charge Reform Proposals Will Impact States, Telcos, IXCs," State Telephone Regulation Report, January 9, 1997, at 1.

have to be passed along to consumers. Unlike other industries, where competition and costs may be such that businesses can absorb these types of cost increases, competition in the Internet online services industry has already created exceedingly thin profit margins.[9] Undoubtedly, rate increases of this magnitude would serve to stifle consumer demand for and interest in information services, especially given the high price-sensitivity of Internet online consumers, and would ultimately threaten the industry as a whole. Rather than "preserve the vibrant and competitive free market that presently exists for the Internet and other computer services...," as specifically required in the 1996 Act, the public would lose the substantial benefits that Internet online information services have created.

Significantly, the Commission has already indicated that it understands that the "mere fact that providers of information services use incumbent LEC networks to receive calls from their customers does not mean that such providers should be subject to an interstate

[9] For instance, in late 1996, Netcom announced that it would no longer service the residential/consumer market with a $19.95 flat-rate for Internet access due to intense competitive pressures. Janet Kornblum, "ISPs Want to Take Care of Business," News.Com, December 19, 1996 (Netcom "announced that it will join the ranks of CompuServe and other services that are abandoning the mass consumer market in favor of small and medium-sized businesses. At $19.95 for unlimited access, Internet service providers simply can't make money."). See also Mike Ricciuti, "Market a Tight Squeeze for New ISPs;" Christine MacDonald and Dawn Yoshitake, "ISPs See Big Losses," News.Com, October 22, 1996; "CompuServe Disbanding Wow!, Back to Basics," Industry.Net Report, November 22, 1996 (CompuServe disbanded its family-oriented Wow! online service due to "new market entrants, or Internet service providers, pricing competition and the high costs of consumer marketing.").

regulatory system designed for circuit-switched interexchange voice telephony."[10/] Indeed, information services providers are not at all unique in generating public switched network traffic -- almost all businesses operate in this manner. Notably, other businesses such as call-in radio shows or concert ticket vendors can also induce large amounts of incoming local telephone traffic, analogous to Internet online information service providers. Yet, imposition of access charge fees on these entities would be ludicrous and completely contrary to the basic purpose of the interexchange access charge framework. It would be just as illogical and baseless to apply interexchange access charges to information service providers.

Indeed, requiring only information service providers to pay access charges would violate the prohibition in Section 202(a) against unjust and unreasonable discrimination. Under Section 202(a) of the Communications Act, "unjust or unreasonable" discrimination is prohibited for "like" communications services.[11/] Since numerous other businesses use the network in precisely the same manner as Internet online information service providers, singling out Internet online service providers would be unjustly and unreasonably discriminatory.[12/]

[10/] Notice at ¶ 288.

[11/] See 47 U.S.C. § 202(a).

[12/] See Study of Economics and Technology, Inc., Lee L. Selwyn and Joseph W. Laszlo, "The Effect of Internet Use on the Nation's Telephone Network," January 22, 1997, ("ETI Study"), at 18, attached to Comments of the Internet Access Coalition, CC Docket 96-262, filed January 29, 1997.

The access charge framework was designed to address rate discrimination in the interexchange market, as well as to preserve subsidy flows between local and long distance services, not to generate revenue for future competitive infrastructure investment.[13] The incumbent LEC claims that imposition of access charges is necessary to support foreseeable infrastructure investment misconstrue the objectives of the access charge regime and should be rejected.

B. The FCC Properly Recognizes the Need for Economically Efficient Pricing and Should Continue to Promote Robust Competition

In its Notice, the FCC explicitly acknowledges the need for economically efficient pricing of network services as it moves to implement the competition that is the cornerstone of the Telecommunications Act of 1996.[14] In pursuing this mandate, the FCC has already taken several critical steps to reaffirm the need for rational and efficient economic pricing as telecommunications markets, particularly the local exchange and exchange access markets,

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[13] See, e.g., In the Matter of MTS and WATS Market Structure, CC Docket No. 78-72, Phase 1, Third Report and Order, 93 FCC 2d 241 (1983), modified on further recon., 97 FCC 2d 834, 883, (1984), aff'd in principal part and remanded in part, National Ass'n of Regulatory Util. Commissioners v. FCC, 737 F.2d 1095 (D.C. Cir. 1984), cert. denied, 469 U.S. 1227 (1985), modified on further recon., 102 FCC 2d 849 (1985).

[14] Notice at ¶¶ 14, 49, 55-56; H.R. Conf. Rep. No. 458, 104th Cong. 2d Sess. 113 (1996) (the 1996 Act establishes "a pro-competitive, de-regulatory national policy framework" to "open all telecommunications markets to competition") ("Conference Report"); id. at 117 (the 1996 Act added "sections 251-261 to the Communications Act to create competitive communications markets"); see also, e.g., 47 U.S.C. §§ 257 (listing the promotion of "vigorous economic competition" as a purpose of the Act), 271.

are opened to competition.[15] It is for this reason that the Commission's rules should seek to impose costs in a cost-causative manner, so that business decisions are driven by proper economic signals.[16] Accordingly, AOL strongly supports the FCC's efforts to reform its access charge rules, promote interconnection, and devise explicit subsidy mechanisms.

In AOL's experience, both as an Internet online information service provider and as a large consumer of telecommunications services, it is the development of competition, especially facilities-based competition, that will be critical to creating an environment with the affordable and ubiquitous services needed to sustain the emerging Internet online services market. Today, despite the growing endorsement of local telecommunications competition, the fact remains that the incumbent LECs, and their investment decisions, control the prices

[15] See, e.g., Notice at ¶¶ 6-7, 14; In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket Nos. 96-98, 95-185, FCC 96-325 (rel. August 8, 1996) at ¶¶ 3, 11, 29, 672, 679 ("Interconnection Order"), stayed in part pending judicial review, Iowa Util. Board v. F.C.C., No. 96-3406 (8th Cir. filed October 15, 1996), application to vacate denied, ___ U.S. ___, 117 S.Ct. 429 (November 12, 1996).

[16] See Notice at ¶¶ 14, 49, 55-56 (Because the current access charge rules compel ILECs "to impose charges for access services in a manner that does not accurately reflect the way those LECs incur the costs of providing those services," the "rate structure rules do not send accurate pricing signals to customers, and consequently, encourage inefficient use of telecommunications services. . . . These inaccurate pricing signals . . . could very well skew or limit the development of competition in the markets for telecommunications services."); Interconnection Order at ¶ 8 (access charge reform is necessary because "it is widely recognized that because a competitive market drives prices to cost, a system of charges which includes non-cost based components is inherently unstable and unsustainable"), 11. See also 47 U.S.C. § 252(d) (mandating cost-based rates for interconnection, unbundled elements, and transport and termination).

and costs involved in delivering critical links for the vast majority of telecommunications traffic. For instance, AOL and its customers are almost exclusively dependent upon incumbent LEC facilities and services in bringing the benefits of the Internet online world to virtually all residential and business subscribers.[17] Service costs, facilities provisioning, traffic balancing, and network engineering all can depend directly upon how and how much the incumbent LEC charges and how quickly it acts.

For the foreseeable future, even using competitive LECs does not avoid these facts, as these competitors remain dependent upon the incumbent LECs in fundamental ways. Thus, in some instances where AOL is a customer of competitive LECs, it has been informed that incumbent LEC delays are the cause of the inability of the competitive LECs to provide AOL with timely service. For instance, as a customer of Teleport Communications Group in Boston and of MFS in New York, AOL has been told that service delays are due to interconnection agreement obstacles and provisioning problems originating with the incumbent LEC with whom the competitor must do business. Clearly, it is not enough simply to assert that there a competitive alternatives that will address the market power of the incumbent local telephone companies.

Consequently, in this environment, the adoption of forward-looking costs will serve to create incentives for efficiency and help stem the anticompetitive conduct that can occur with

[17] This "last mile" problem is, of course, not specific to the online information services industry, but affects all services, including the development of competitive voice and video services.

incumbent dominant providers.[18] At the same time, it is vital that government policy encourage the deployment of efficient, competitive networks capable of meeting future needs, by creating maximum incentives to deploy ubiquitous alternative facilities by new competitors. While there may not be a genuine network capacity problem with today's architecture that cannot be addressed fairly easily with improved traffic balancing and engineering, as well as rational services pricing, long term development must be addressed with the forward-thinking approach of facilities-based competition.

II. THERE IS NO EVIDENCE OF UNCOMPENSATED USE OF THE NETWORK BY INFORMATION SERVICE PROVIDERS THAT WARRANTS THE IMPOSITION OF INTEREXCHANGE CARRIER ACCESS CHARGES

AOL applauds the FCC's decision to open a Notice of Inquiry ("NOI") to identify policies that will facilitate the development of high-bandwidth networks for the future.[19] It is this type of forward-looking planning that will best ensure that necessary infrastructure exists to meet the demands of tomorrow's data-intensive applications. While recent statements indicate that there is no "critical problem" at this time,[20] AOL agrees that there

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[18] Interconnection Order at ¶¶ 672 ("Prices . . . should reflect forward-looking economic costs in order to encourage efficient levels of investment and entry."), 679 ("[A] forward-looking cost methodology reduces the ability of an incumbent LEC to engage in anticompetitive behavior.").

[19] In the Matter of Usage of the Public Switched Network by Information Service and Internet Access Providers, Notice of Inquiry, CC Docket No. 96-263, FCC 96-488 (rel. December 24, 1996), at ¶ 311.

[20] See Norm Alster, "FCC Chairman Wants to Keep Net Access Free, Interview with Chairman Reed E. Hundt," Investors Business Daily, January 16, 1997.

must be sufficient information about the characteristics of network usage by information service providers' customers, as well as incumbent LEC cost and revenue data, if the FCC is to understand and respond completely to the implications of information service and Internet usage as it impacts the public switched network. While AOL intends to participate fully in that phase of this proceeding, it is important to underscore in connection with the instant Notice some of the fundamental misperceptions that have resulted in claims of serious network congestion and potential network collapse.[21/]

First, and most importantly, there is no imminent collapse of the public switched network, nor is there widespread network congestion that is impeding the ability of voice customers to use the telephone network. It is critical not to confuse recent incidents of internal congestion within AOL's proprietary network with public telephone network congestion. AOL has taken responsibility for ensuring that it can meet customer's needs, and has committed to increasing investment and service to do so as rapidly as possible.[22/]

Moreover, where there have been pin-pointed instances of telephone network congestion, AOL has committed to working with the LECs to address network engineering

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[21/] See, e.g., Notice at ¶ 286; "Internet's Pricing Structure, Not Flood of Users is Threat To Its Survival," Press Release, Pacific Telesis, <www.pactel.com>, October 23, 1996.

[22/] Thus, AOL has decided to increase investment in system capacity to $350 million and to add many more customer service representatives.

and traffic balancing issues that arise and will continue to do so going forward.[23] While AOL intends to address these issues more fully in the NOI, it is critical to highlight that we will continue to work with the LECs to avoid in the first instance and alleviate in the second instance all such congestion episodes.[24] Moreover, while the LECs have cited to instances of "switch congestion" as a result of Internet online usage,[25] AOL's deployment and service strategy has been to avoid line-side connections so as to avert such problems altogether.[26]

Finally, there is no evidence that incumbent LEC revenues are not already fully compensatory with respect to any additional capacity that must be deployed to meet increased traffic flows. All end-users, as well as information service providers themselves, currently compensate the LECs for the services they use. Moreover, as the LECs themselves have

[23] For example, AOL, in conjunction with its vendor BBN, periodically holds a forum with Bell Operating Company representatives to identify provisioning needs and likely service projections.

[24] Indeed, AOL believes that at this stage, most of these congestion issues can be addressed through cooperative network engineering and traffic balancing, with particular focus on identifiable central offices.

[25] See e.g., LEC studies cited in the Notice at ¶ 286 n.386.

[26] The cited switch congestion problems arise due to line-side connections at the switch and a mismatch between traffic characteristics and engineering choices at the Line Concentration Module. As detailed fully in the ETI Study, there are a variety of means by which LECs can avoid such congestion problems, see ETI Study at 9-11.

publicized, revenue from second lines and new network uses has increased significantly.[27] Indeed, indications are that the costs of installing second lines are only a fraction of the revenue derived therefrom.[28] Absent any legitimate data that the incumbent LECs are not being fully compensated, it would be premature and unwise to levy any new charges to create additional revenue for the LECs. Indeed, doing so could have precisely the wrong impact on LEC incentives. Rather than send price and cost signals that encourage efficient deployment of technology best suited for future uses, the LECs may be given incentives to continue the deployment of facilities that are ill-suited to meet the nature and scope of expected traffic demands.

CONCLUSION

Internet online information services such as those offered by AOL have brought innumerable benefits to consumers throughout the U.S. and around the world. Through sound government policy, the industry has flourished. It is precisely this sound policy that must continue so that the benefits can spread. The FCC should reject unsubstantiated and uneconomic claims that interexchange carrier access charges should be imposed upon

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[27] See "Pacific Bell Attacks Internet Access Exemption," Communications Daily, January 16, 1997, at 3 (the Internet has produced 150% increase in new phone lines, 190% increase in second lines, 285% increase in ISDN lines, and over 300% increase in some business data services).

[28] ETI Study at 17, 24, 26 ("additional access line sales stimulated by the growth of on-line services alone generated revenues that exceed [the costs of adding those lines] by a factor of six").

information services providers to avert public switched network collapse or to fund inefficient circuit-switched infrastructure. Instead, the FCC should seek to create maximum incentives to promote the deployment of ubiquitous and affordable data-capable networks that can benefit all consumers.

Respectfully submitted,

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Dated: January 29, 1997

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CERTIFICATE OF SERVICE

I, Cheryl S. Flood, hereby certify that on this 29th day of January, 1997, I caused copies of the foregoing "COMMENTS OF AMERICA ONLINE, INC." to be sent first-class mail, postage prepaid, or to be delivered by messenger (*) to the following:

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